

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CHRISTINE E. ARMITAGE,	)	18-cv -
	)	
	)	
Plaintiff	)	
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

### **COMPLAINT FOR REFUND OF OVERPAYMENT OF PAYROLL TAXES**

Comes now the Plaintiff Christine E. Armitage and brings this civil action for refund of overpayment of payroll taxes. In support thereof, the Plaintiff states as follows:

#### **PRELIMINARY STATEMENT**

1. This is a civil action for refund of an overpayment by the Plaintiff of the trust fund portion of payroll taxes pursuant to 26 U.S.C. §6672.
2. The Plaintiff was assessed the Trust Fund Recovery Penalty (TFRP) liability of Securcomm, Inc. (Securcomm) for the second and third quarter of 2014 payroll taxes.

#### **JURISDICTION AND VENUE**

3. Jurisdiction for this case is conferred upon this court by 28 USC § 1346 (a)(1).
4. The Plaintiff's principal place of residence is the State of Nebraska and the corporation for which the TFRP was assessed operated in the State of Nebraska.

#### **GENERAL ALLEGATIONS**

5. That on or about May 29, 2015 the Department of the Treasury, Internal Revenue Service, proposed to assess the Plaintiff the TFRP for the payroll taxes of Securcomm, Inc. for the second and third quarter of 2014.

6. The Plaintiff timely appealed that determination, which appeal was denied on or about December 15, 2015.
7. The Plaintiff then paid a divisible portion of her payroll taxes for the second quarter of 2014 in the sum of \$1,761.80 credited from her 2015 income tax refund and a payment on the third quarter of 2014 in the sum of \$395.91 and filed a Form 843 Request For Refund which was received by the IRS on or about March 1, 2016. See, Exhibit A.
8. That more than six months lapsed, and the IRS did not rule or acted upon the request for refund.
9. Thereafter, the Plaintiff sought the assistance of the Taxpayer Advocates Office to seek a ruling on her request for refund but was unable to secure any action on her claim.
10. The Plaintiff subsequently asked for reconsideration of the assessment of the TFRP, which reconsideration was denied on February 13, 2018. See, Exhibit B.

#### **CLAIM FOR RELIEF**

11. Paragraphs 1 – 10 are incorporated herein by reference.
12. The Plaintiff was not a shareholder, officer or employee with the actual authority to make decisions regarding the payment of corporate obligations including payroll taxes.
13. The Plaintiff did not willfully fail to pay over any trust fund taxes due on the account of any payroll tax withholding of Sequrcomm, Inc.
14. That the Plaintiff has wrongfully been assessed the trust fund recovery penalty as follows:

Tax Period	Penalty Assessed
6/30/2014	\$43,617.30
9/30/2014	\$29,419.79

15. That the TFRP assessment should be vacated and set aside and the Plaintiff should be refunded the payments made.

WHEREFORE, the Plaintiff prays for a determination that the TFRP was erroneous; that she is entitled to a refund of the sums paid, plus interest and for her costs and attorney's fees as may be provided by law, and for such other, further and different relief as the Court deems just and appropriate.

CHRISTINE E. ARMITAGE, Plaintiff

*s/Robert B. Creager*  
Robert B. Creager # 15370  
ANDERSON, CREAGER &  
WITTSTRUCK, P.C. LLO  
1630 K Street  
Lincoln, NE 68508  
(402) 477-8800  
Attorney for Plaintiff